

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTIN SARABIA)	
Claimant)	
VS.)	
)	Docket No. 1,015,356
CHEYENNE DRILLING, INC.)	
Self-Insured Respondent)	

ORDER

Claimant appealed the March 6, 2007, Award entered by Administrative Law Judge Pamela J. Fuller. The Workers Compensation Board heard oral argument on June 5, 2007.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. Darin M. Conklin of Topeka, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. In addition, on June 19, 2007, the parties filed a stipulation that further addressed claimant's alleged task loss and the post-injury wages claimant earned working for another employer, Navajo Trucking.

ISSUES

This is a claim for an October 17, 2002, accident and alleged injuries to claimant's left shoulder and low back. In the March 6, 2007, Award, Judge Fuller awarded claimant permanent disability benefits for a 12 percent functional impairment to the left shoulder. The Judge found claimant did not injure his back in the October 17, 2002, accident.

Claimant contends Judge Fuller erred. He argues he permanently injured both his left shoulder and back in the accident. Accordingly, claimant argues he is entitled to receive permanent partial general disability benefits under K.S.A. 44-510e for a work disability¹ followed by permanent disability benefits for a 24 percent whole person functional impairment. In short, claimant requests the Board to modify the Award.

Conversely, respondent contends the Award should be affirmed. Respondent argues claimant failed to prove his low back complaints were related to the October 17, 2002, accident and, therefore, claimant is entitled to receive permanent disability benefits for the left shoulder under the schedules of K.S.A. 44-510d.

The nature and extent of claimant's disability and injuries are the only issues before the Board on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the Award should be affirmed.

Claimant worked for respondent on one of its drilling rigs as a floor hand. On October 17, 2002, a drill pipe fell and hit claimant on the back of the left shoulder. Claimant was immediately taken to a hospital emergency room for treatment of intense left arm and shoulder pain.

At the time of the accident, claimant was working in Texas. The emergency room referred claimant for medical treatment in Liberal, Kansas, where claimant was living. Dr. Suhail Ansari saw claimant on the date of accident and began a course of treatment. Consequently, Dr. Ansari immediately operated on claimant's left shoulder to repair a comminuted scapular fracture. For several months following surgery, claimant underwent physical therapy.

In April 2003, Dr. Mark S. Williams saw claimant as he was experiencing reduced rotation and movement in his left shoulder. Claimant had been referred by his nurse case manager to Dr. Williams, who is a sports medicine physician. Following an examination, Dr. Williams recommended that claimant consult a specialist.

¹ A permanent partial general disability greater than the functional impairment rating that is computed averaging task loss and wage loss.

In May 2003, claimant was evaluated by Dr. Harry A. Morris for a second opinion regarding the pain and popping he was experiencing in his left shoulder. After having claimant undergo a CT scan, Dr. Morris concluded claimant was experiencing tightness in his shoulder due to adhesive capsulitis. Consequently, on July 1, 2003, the doctor operated on claimant's left shoulder to release the adhesive capsulitis and decompress the subacromial joint.

At his attorney's request, claimant was evaluated by Dr. Pedro A. Murati in both March and September 2004. But the most recent medical evaluation was conducted in May 2005 by Dr. Williams at Judge Fuller's request.

In addition to the left shoulder injury, claimant contends he also injured his low back in the October 17, 2002, accident. Claimant never requested treatment for his low back problems. And the record contains several different versions of when those symptoms began. At a deposition taken in February 2005, claimant testified he began noticing back pain after Dr. Ansari released him from therapy. According to claimant, the doctor told him at the time that his accident might affect other parts of his nervous system all over his body. When the doctor released claimant from therapy and claimant drove to and from California, claimant allegedly noticed his "spine was damaged."² At the February 2005 deposition, claimant also testified he did not tell any doctor, other than Dr. Ansari, about his alleged back symptoms as he "didn't ever see anybody else."³

At the October 13, 2006, regular hearing, claimant initially testified he first noticed back symptoms when physical therapy ended and he went to California with his brother. But he then testified he first felt low back pain, which never resolved, during physical therapy when a therapist had him lift a heavy box. Later at the regular hearing, claimant testified he told Dr. Ansari the day of the accident that his back was hurting.⁴

Claimant allegedly initially advised Dr. Ansari about his back symptoms, told the physical therapist several times about his back hurting, told Dr. Williams about his back complaints, and told Dr. Morris about his back problems. But neither Dr. Ansari, Dr. Morris, nor Dr. Williams (at his April 2003 visit with claimant) noted those alleged symptoms.

Dr. Ansari, who evaluated claimant on the day of the accident, examined claimant's back and legs and noted he had no spinal pain. Moreover, Dr. Ansari treated claimant through March 2003, and neither noted nor recalled claimant complaining of his back.

² Sarabia Depo. at 26, 27.

³ *Id.* at 29.

⁴ R.H. Trans. at 33.

Likewise, Dr. Ansari could not find any back complaints being noted by the physical therapist. And Dr. Morris, who treated claimant between mid-May and October 2003, did not note and had no recollection that claimant was allegedly having back complaints while the doctor was treating him. In addition, Dr. Williams testified claimant did not tell him about any back problems at the April 2003 visit.

The Board agrees with Judge Fuller that claimant has failed to prove he injured his back in the October 2002 accident. As indicated above, the various doctors do not lend credence to claimant's assertions that he told the various doctors about his back complaints. Although Dr. Williams noted claimant was having back symptoms at the second and final appointment in May 2005, the doctor was unable to relate those symptoms to the October 2002 accident. Only Dr. Murati, who was claimant's medical expert witness, related claimant's back complaints to the accident at work.

The Board adopts the findings and conclusions set forth by the Judge, including the finding that claimant sustained a 12 percent left upper extremity impairment due to the October 17, 2002, accident. That functional impairment rating was provided by Dr. Williams, whom the Judge authorized to perform an unbiased, independent medical evaluation. Accordingly, the Board is likewise persuaded.

In conclusion, the Board concludes the Award should be affirmed.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁵ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms the March 6, 2007, Award entered by Judge Fuller.

IT IS SO ORDERED.

⁵ K.S.A. 2006 Supp. 44-555c(k).

Dated this ____ day of August, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
Darin M. Conklin, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge